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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/625,000
Filing Date: July 22, 2003
Appellant(s): FLAKE ET AL.

Antonio Papageorgiou
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on October 26, 2010 appealing from the Office action mailed on March 11, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:
1-7 and 9-14.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

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(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

The following evidence is relied upon by the Examiner in the rejection of the claims under appeal:

Skinner (US 2003/0105677)

Marks (US 2001/0051911)

Cheung (US 2003/0028529)

Robin Hanson, "Idea Futures: Encouraging an Honest Consensus," Extropy 3:2, 1992.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 and 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skinner (US 2003/0105677) in view of Marks (US 2001/0051911) and Cheung (US 2003/0028529), and further in view of Hanson, “Idea Futures: Encouraging an Honest Consensus.”

Claim 1: Skinner discloses in a computerized system for allowing transactions in instruments, the instruments being capable of being valued based on values of term-based concepts, and terms of the concepts being useable in computerized searches, a method for valuing a concept, the method comprising:

- obtaining quantitative data associated with the concept (see ¶ 38; ¶ 12: lines 1-9, disclosing tracking search terms to determine effectiveness based on a number of impressions, number of clicks, and number of sales);
- electronically operating on the quantitative data to produce a quantitative statistic by using at least one of: a total revenue per period calculation; a median revenue per period calculation; an average revenue per period calculation; an average of

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median bidded price calculation; a median of median clicked price calculation; and a median click calculation (see id., disclosing analyzing the data as well as collecting it; ¶ 41, disclosing the amount of a purchase); and

- electronically determining a value of the concept based at least in part on the produced statistic such that the value is used in the computerized system allowing transactions in the instruments (see id., disclosing determining the search terms effectiveness to advertising and marketing; paragraphs 12 and 37, disclosing using the value in a computer).

Skinner also discloses wherein the concept comprises a set of search terms relating to a common theme. Moreover, Marks discloses a more narrow interpretation of this limitation (see figures 2A and 2B; ¶ 10). Skinner does not disclose wherein a granularity of the set of search terms relating to the common theme of the concept is defined. However, Marks discloses this limitation (see figures 2A-2C; ¶¶ 10, 27-29, and 40). Skinner and Marks are both directed to bidding and ranking in search engines. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the bidding system of Marks (including “concept” groupings) and the bidding system of Skinner. One of ordinary skill in the art would have been motivated to do so for the benefit of efficiencies gained by purchasing a group of key words rather than individual key words (see e.g. Marks, ¶ 3).

Examiner takes Official Notice that all of the claimed quantitative statistics were well-known in the art at the time the invention was made. Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the claimed quantitative statistics to determine Skinner’s search term’s effectiveness. One of ordinary skill in the art

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would have been motivated to do so for the benefit of tailoring their bidding decision to what they believe is the most accurate measure of effectiveness. As documentary evidence of Examiner's Official Notice, please see: Skinner (US 2003/0105677), paragraphs 12, 38, and 43; Rebane (US 2004/0088241), figures 9, 10, and 13; Meisel (US 7,035,812), columns 16-19 and 29; Anderson (US 2004/0093327), paragraph 153; and Corn (US 2004/0167845), figures 11-13.

Skinner does not explicitly disclose electronically monitoring for intentional manipulation and taking at least one measure to prevent intentional manipulation of the value of the concept in response to the detection of intentional manipulation. Cheung teaches this limitation (see paragraph 150, disclosing screening clicks to determine if they are chargeable). It would have been obvious to one of ordinary skill in the art at the time the invention was made to screen the clicks of Skinner according to the click-screening methods disclosed by Cheung. One of ordinary skill in the art would have been motivated to do so for the benefit of maintaining integrity by eliminating fraudulent clicks. Skinner also does not explicitly disclose wherein the at least one measure includes removing maximum and minimum figures to produce the quantitative statistic. Examiner takes Official Notice that it was well-known in the art at the time the invention was made to remove maximum and minimum figures to produce a statistic. This is commonly referred to as removing outliers, and is an old and well-known statistical technique. Furthermore, this technique was employed before the claimed invention, for example, when judging competitions. It is common to remove the highest and lowest scores in a competition where there are several judges; this is done to prevent tampering by judges (and was done before the present invention at, for example, the Olympics). Finally, a common technique for finding the median value of a set of numbers is to sequentially remove the highest and lowest numbers

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until there is only one remaining number; the last remaining number is the median value of the set. Because several of the quantitative statistics are median values, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the technique of removing the maximum and minimum figures to produce the median value. One of ordinary skill in the art would have been motivated to do so for the benefit of an accurate representation of the median. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the old and well-known statistical technique of removing the maximum and minimum values when producing the statistics disclosed by Skinner and the other cited references. One of ordinary skill in the art would have been motivated to do so for the benefit of accuracies gained by preventing tampering and removing outliers.

Skinner does not explicitly disclose electronically determining a value of one or more instruments based at least in part on the value of the concept. Hanson discloses an “idea futures market” wherein people would exchange coupons representing concepts (see at least “Procedures” section on page 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Hanson’s idea futures market to the search-term based concepts of Skinner and Marks. One of ordinary skill in the art would have been motivated to do so for the benefit of increased accuracies in valuing search terms (see also “Advantages” beginning on page 7).

Claim 2: Skinner discloses wherein obtaining quantitative data associated with the concept comprises obtaining quantitative data associated with the demand for one or more of the

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terms of the set of search terms (see ¶¶ 12 and 37-38, disclosing obtaining demand based on impressions, clicks, and sales; ¶ 48, disclosing obtaining competitor demand information).

Claim 3: Skinner discloses wherein obtaining quantitative data associated with the concept comprises obtaining quantitative data associated with the demand for one or more of the terms of the set of search terms for use in advertising (see ¶¶ 12 and 38, disclosing obtaining data related to advertising and marketing).

Claim 4: Skinner discloses measuring the demand for use in advertising based on one or more amounts paid for use in advertising (see ¶ 48, disclosing obtaining competitor bid information).

Claim 5: Skinner discloses measuring the demand for use in advertising based on one or more amounts paid for use in advertising, wherein the use in advertising comprises obtaining one or more rights to have an advertisement included in results from one or more computerized searches using at least one of the terms of the term set (see id.).

Claim 6: Skinner discloses operating on the data by using the data in at least one mathematical formula (see ¶¶ 44-45 and 50-60).

Claim 7: Skinner discloses collecting quantitative data relating to one or more Pay-Per-Click auctions (see ¶¶ 5, 8, 20, and 39).

Claim 9: Skinner does not explicitly disclose wherein monitoring for intentional manipulation comprises analyzing trading patterns, comparing IP addresses or cookies between ad clicks and trading accounts, or similar techniques. Cheung discloses this limitation (see paragraph 150, disclosing detecting clicks generated at a particular location or from a particular resource). It would have been obvious to one of ordinary skill in the art at the time the invention was made to screen the clicks of Skinner according to the click-screening methods disclosed by Cheung. One of ordinary skill in the art would have been motivated to do so for the benefit of maintaining integrity by eliminating fraudulent clicks.

Claim 10: Skinner discloses taking at least one measure to maintain liquidity (see ¶¶ 16 and 21, disclosing eliminating bid gaps and preventing overbidding, which serve to maintain liquidity in an advertiser's account).

Claim 11: Skinner does not explicitly disclose operating on the data by using a median click calculation, and comprising omitting from the median click calculation one or more highest and lowest price quantities.

However, Skinner teaches determining a number of clicks per time period (see ¶ 38) and using that to determine a reasonable estimate of the expected clicks for a future time period (see ¶ 43: lines 10-11).

Examiner takes Official Notice that it is well known in the statistical arts to average a set of data, including using a median value, over past time periods in order to determine an

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expectation for future time periods. Furthermore, Examiner takes Official Notice that it is well known in the statistical arts to omit outliers of highest and lowest values from a median calculation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use well-known statistical methods in conjunction with the click data disclosed by Skinner. One of ordinary skill in the art would have been motivated to do so for the benefit of a more accurate prediction.

Claim 12: Skinner does not explicitly disclose omitting from the median click calculation the same number of highest price quantities as lowest price quantities. Examiner takes Official Notice that it is well known in the statistical arts to eliminate an equal number of outliers from a median calculation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use well-known statistical methods in conjunction with the click data disclosed by Skinner. One of ordinary skill in the art would have been motivated to do so for the benefit of a more accurate prediction.

Claim 13: Claim 13 is substantially similar to claim 1, and is rejected under similar rationale.

Claim 14: Claim 14 is substantially similar to claim 11 and is rejected under similar rationale.

(10) Response to Argument

Applicant argues the following:

- (A) Skinner, Marks, Cheung, and Hanson do not disclose "electronically operating on the quantitative data [associated with the concept] to produce a quantitative statistic by using at least one of: a total revenue per period calculation; a median revenue per period calculation; an average revenue per period calculation; an average of median bid price calculation; a median of median click price calculation; and a median click calculation." (See Brief, pages 6-7 and 8-10).
- (B) The motivation to combine Skinner and Marks is improper. (See Brief, pages 7-8).
- (C) Skinner, Marks, Cheung, and Hanson do not disclose "electronically monitoring for intentional manipulation and taking at least one measure to prevent intentional manipulation of the value of the concept in response to the detection of intentional manipulation, wherein the at least one measure includes removing maximum and minimum figures to produce the quantitative statistic." (See Brief, pages 10-12).
- (D) The motivation to combine Skinner, Cheung, and Official Notice is improper. (See Brief, pages 12-13).
- (E) Skinner, Marks, Cheung, and Hanson do not disclose "electronically determining a value of one or more of the instruments based at least in part on the value of the concept." (See Brief, pages 13-14).
- (F) The motivation to combine Skinner, Marks, and Hanson is improper. (See Brief, pages 14-15).

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(G) Skinner, Marks, Cheung, Hanson, and Official Notice have been combined using hindsight. (See Brief, pages 15-16).

(H) Skinner, Marks, Cheung, and Hanson do not disclose "operating on the data by using a median click calculation, and comprising omitting from the median click calculation one or more highest and lowest price quantities." (See Brief, pages 16-18).

Appellant's arguments will now be addressed in turn.

(A) Skinner, Marks, Cheung, and Hanson do not disclose "electronically operating on the quantitative data [associated with the concept] to produce a quantitative statistic by using at least one of: a total revenue per period calculation; a median revenue per period calculation; an average revenue per period calculation; an average of median bidded price calculation; a median of median click price calculation; and a median click calculation." (See Brief, pages 6-7 and 8-10).

Regarding argument (A), Examiner respectfully disagrees. Skinner discloses a system that "tracks search terms" and "determines the search term's effectiveness by collecting and analyzing data relating to . . . the number of **clicks**, and the number of **resulting sales generated by a search term at a given time period**." (See abstract; paragraph 12; see also paragraph 38). In paragraph 41, Skinner discloses recording "the amount of purchase," which is "tracked to the search term . . . initially used to refer the user to the advertiser's web site." (See paragraph 41). In this way, Skinner tracks the sales revenue generated as a result of a search term. This revenue

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is aggregated to determine the total revenue per period generated by a search term. (See abstract and paragraphs 12 and 38, as disclosed above). For example, paragraph 44 discloses calculating "**the amount of sales** divided by the cost to advertise per keycode **per unit of time**." In other words, this calculation divides the amount of sales generated by a search term in a time period by the cost to advertise using that search term in the same time period, which allows the user to determine whether the advertising investment is worthwhile. (See, e.g., paragraph 45, disclosing a max bid statistic determined using the total revenue per period; paragraph 52, disclosing a value for return on advertising spent in light of **profits made on a particular product or service** based on a search term).

To summarize, Skinner discloses using a computer (figures 1-2) to aggregate sales information associated with a conceptual search term (paragraphs 12, 38, 41, and 44) to produce a quantitative statistic by using a total revenue per period calculation (paragraphs 44 and 45). Thus, Skinner discloses the claimed limitation of electronically operating on the quantitative data associated with a concept to produce a quantitative statistic by using a total revenue per period calculation.

In addition to teaching electronically operating on the quantitative data by using a total revenue per period calculation, Skinner also teaches electronically operating on the quantitative data by using a median click calculation (see abstract, paragraph 12, and paragraph 38, disclosing determining search term effectiveness by collecting and analyzing data relating to the number of clicks generated by a search term in a given time period; paragraph 43, disclosing determining a reasonable estimate of the expected clicks for a given time period). Examiner also took Official Notice of this limitation in the final office action dated March 11, 2010, as evidence

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by at least Meisel (US 7,035,812; see column 16: lines 13-21, disclosing the average click-through rate). Thus, Examiner has shown two separate ways in which the argued limitation is taught by the cited references.

(B) The motivation to combine Skinner and Marks is improper. (See Brief, pages 7-8).

Regarding argument (B), Examiner respectfully disagrees. Marks was relied upon to show that searchable concepts can have defined granularities consisting of a number of specific search terms. (For example, see figure 2B, showing that the term "Food" can be defined to encompass the terms "Breakfast" and "Restaurant," which can be further defined to encompass specific types of food; see also figures 2A and 2C, depicting similar ideas). Skinner's invention is described using a "search term," rather than a "concept" comprising a set of search terms. However, Skinner's invention can be modified to achieve the claimed "concepts" via a simple duplication. It would be a simple matter to combine data for more than one "search term" of Skinner, simply by repeating the process. Marks provides evidence of such a duplicative process because it shows combining multiple "search terms" into a "concept."

In the final office action dated March 11, 2010, Examiner stated that one of ordinary skill in the art would have been motivated to substitute Marks's "concept" grouping of search terms for Skinner's singular "search term" for the benefit of efficiencies gained by purchasing a group of key words rather than individual key words (as shown by Marks, paragraphs 45, 48, and 49). However, this is not the only reason to combine the known prior art concepts. As stated above, such a combination is merely a duplication of Skinner's data gathering and analysis process for a

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single "search term." This duplication does not produce any unexpected result; thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made.

(C) Skinner, Marks, Cheung, and Hanson do not disclose "electronically monitoring for intentional manipulation and taking at least one measure to prevent intentional manipulation of the value of the concept in response to the detection of intentional manipulation, wherein the at least one measure includes removing maximum and minimum figures to produce the quantitative statistic." (See Brief, pages 10-12).

Regarding argument (C), Examiner respectfully disagrees. Cheung discloses that each click is "screened to determine if it is a fraudulent click." (See paragraph 150, which also discloses that "Multiple filter[s] may be used to detect fraudulent clicks"). If a fraudulent click is detected, it is filtered out of a click calculation. (See figure 7, depicting that if a click is not chargeable or does not pass the filter due to it being deemed fraudulent as per paragraph 150, it is removed from the click list; see also paragraph 151). As discussed in the final office action dated March 11, 2010, it would have been obvious to one of ordinary skill in the art at the time the invention was made to monitor the clicks of Skinner for fraud according to the click-screening methods of Cheung. One of ordinary skill in the art would have been motivated to do so for the benefit of maintaining integrity by eliminating fraudulent clicks.

Although the cited references do not explicitly disclose removing maximum and minimum figures to produce the quantitative statistic, the practice of removing maximum and minimum figures to eliminate bias/fraud is extremely old and well-known in the statistical arts

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(the example given in the final office action is a judging competition where the highest and lowest scores are removed, and the remaining scores are averaged to determine the final score for a competitor). Examiner maintains the Official Notice taken in the final office action dated March 11, 2010. As stated in that office action, it would have been obvious to one of ordinary skill in the art at the time the invention was made to remove maximum and minimum values when producing the statistics of Skinner for the benefit of eliminating bias/fraud.

Finally, this limitation does not make sense in view of all of the possible quantitative statistics that could be calculated. For example, one of the possible quantitative statistics is produced using "a total revenue per period calculation." Removing maximum and minimum figures is only used when computing a median or average value (see Applicant's specification at paragraph 79: "some number of highest and lowest figures is dropped when computing **averages, means, median click**, etc."). It is not possible to computer a "total revenue" if the maximum and minimum revenue/sales figures are removed because the resulting number would not be the "total revenue," but would be some number less than the total.

(D) The motivation to combine Skinner, Cheung, and Official Notice is improper.

(See Brief, pages 12-13).

Regarding argument (D), Examiner respectfully disagrees. The motivations for combining these references are explained above in response to argument (C), and these motivations mirror those presented in the final office action of March 11, 2010.

(E) Skinner, Marks, Cheung, and Hanson do not disclose "electronically determining a value of one or more of the instruments based at least in part on the value of the concept." (See Brief, pages 13-14).

Regarding argument (E), Examiner respectfully disagrees. Skinner, Marks, and Hanson all disclose this limitation individually. Skinner discloses determining the monetary value of a purchasable search term/concept based on its value to a company (e.g. its value in generating sales or internet traffic). (See paragraphs 44-46, disclosing calculating a bid value for a search term/concept based on the amount of sales generated by the search term/concept). Thus, Skinner discloses electronically determining a value of one or more of the instruments (Skinner's bid/monetary value) based at least in part on the value of the concept (Skinner's sales generated as a result of the search term/concept).

Marks also discloses this limitation. Marks discloses determining a minimum bid value for a search concept based on search records showing the value of the search concept as shown by the number of times it was searched in a given time period. (See paragraphs 20-22). Thus, Marks discloses electronically determining a value of one or more of the instruments (Marks's minimum bid value) based at least in part on the value of the concept (Marks's "number of times the given key word was used in the past week").

Finally, Hanson discloses this limitation. Hanson discloses an "idea futures market" where people can exchange coupons representing concepts (see "Procedures" section on page 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Hanson's ideas futures market to the search-term based concepts of Skinner and Marks.

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One of ordinary skill in the art would have been motivated to do so for the benefit of determining an accurate value for search terms (see "Advantages" section of Hanson, beginning on page 7).

(F) The motivation to combine Skinner, Marks, and Hanson is improper. (See Brief, pages 14-15).

Regarding argument (F), Examiner respectfully disagrees. First, Examiner has shown that Hanson is not even necessary to show the claimed limitation; Skinner can stand on its own to teach the limitation, as shown above in response to argument (E). Furthermore, the motivations for combining these references are explained above in response to argument (E), and these motivations mirror those presented in the final office action of March 11, 2010.

(G) Skinner, Marks, Cheung, Hanson, and Official Notice have been combined using hindsight. (See Brief, pages 15-16).

Regarding argument (G), Examiner respectfully disagrees. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Examiner has properly taken into account only knowledge which was within the level of ordinary skill in the art at the time the claimed invention was made, and does not include

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knowledge gleaned solely from the applicant's disclosure; thus, the rejection is not based on impermissible hindsight.

(H) Skinner, Marks, Cheung, and Hanson do not disclose "operating on the data by using a median click calculation, and comprising omitting from the median click calculation the same number of highest and lowest price quantities." (See Brief, pages 16-18).

Regarding argument (H), Examiner respectfully disagrees. Examiner showed in response to argument (A), above, that the cited references teach "operating on the data by using a median click calculation." First, Skinner this limitation (see abstract, paragraph 12, and paragraph 38, disclosing determining search term effectiveness by collecting and analyzing data relating to the number of clicks generated by a search term in a given time period; paragraph 43, disclosing determining a reasonable estimate of the expected clicks for a given time period). Examiner also took Official Notice of this limitation in the final office action dated March 11, 2010, as evidence by at least Meisel (US 7,035,812; see column 16: lines 13-21, disclosing the average click-through rate). Thus, Examiner has shown two separate ways in which the argued limitation is taught by the cited references.

Examiner also showed above, in response to argument (C), that omitting maximum and minimum values (i.e. highest and lowest price quantities) is well-known in the art. Although the cited references do not explicitly disclose removing maximum and minimum figures to produce the quantitative statistic, the practice of removing maximum and minimum figures to eliminate bias/fraud is extremely old and well-known in the statistical arts. This includes removing the

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"same number" of highest and lowest values, as claimed. (The example given in the final office action is a judging competition where the highest and lowest scores are removed, and the remaining scores are averaged to determine the final score for a competitor). Examiner maintains the Official Notice taken in the final office action dated March 11, 2010. As stated in that office action, it would have been obvious to one of ordinary skill in the art at the time the invention was made to remove maximum and minimum values when producing the statistics of Skinner for the benefit of eliminating bias/fraud.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Neil R. Kardos/

Examiner, Art Unit 3623

/Beth V. Boswell/

Supervisory Patent Examiner, Art Unit 3623

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